

Testimony By Mr. Ray Martinez

United States Election Assistance
Commission

Vice Chairman

Good morning Chairman

Ehlers, Ranking Member Millender-McDonald, and members of the Committee.

My name is Ray Martinez III and I currently serve as vice chair of the U.S. Election Assistance Commission (EAC). I appreciate the invitation to testify this morning at this important hearing.

I will limit my testimony to a brief summation of actions taken by the EAC regarding a request by the State of Arizona to amend its state-specific instructions on the Federal Mail Voter Registration Form (Federal Form). As you know, the EAC is the Federal agency charged with regulating the development and substance of the Federal Form as mandated by the National Voter Registration Act of 1993, 42 U.S.C. § 1973gg et seq., (NVRA). Following the Help America Vote Act of 2002 (HAVA), the Federal Voter Registration Form requires applicants to answer a specific question regarding their citizenship and to sign a statement attesting to the fact that they are citizens of the United States.

On December 12, 2005, in response to a routine request by EAC staff,[1] the EAC received a request from the Arizona Secretary of State's office to amend the Arizona instructions as they pertain to the Federal Form. Specifically, the inquiry sought to apply documentary proof of citizenship requirements for Arizona voter registration (derived from the passage of Proposition 200) to the Federal Form registration process.

After careful consideration of Arizona's request to amend its state-specific instructions, the EAC responded on March 6, 2006, stating that EAC would not alter Arizona's instructions to include information regarding documentary evidence of citizenship as a condition of registration on the Federal Form. Among other things, the letter stated that NVRA mandates that States "shall accept and use the mail voter registration application proscribed by the U.S. Election Assistance Commission pursuant to section 9(a)(2) for the registration of voters in elections for Federal office." [2]

On March 13, 2006, the EAC received a letter from Arizona Secretary of State Jan Brewer noting her disagreement with EAC's conclusion and stating that Arizona's proof of citizenship requirement was precleared by the Department of Justice (DOJ).

The EAC responded on March 23, 2006 informing Secretary Brewer that DOJ preclearance does not address NVRA compliance nor does it impact the specific requirements of the NVRA which mandate that each State shall use and accept the Federal Form. Moreover, the EAC informed Secretary Brewer that since she had instructed Arizona's county recorders to continue enforcing the requirement that voters using the Federal Form provide documentary evidence of citizenship when registering to vote the EAC considered such instructions as tantamount to rejection of the Federal Form and we forwarded this matter to the Department of Justice.

On June 19, 2006, U.S. District Judge Roslyn Silver issued an opinion denying a temporary restraining order which would have required Arizona to accept and process the Federal Form without documentary proof of citizenship. Judge Silver set a preliminary injunction hearing for July 19-20, 2006. As a result of Judge Silver's opinion, the State of Arizona has renewed its request that the EAC amend its instructions on the Federal Form to reflect the state's documentary proof of citizenship requirement. [3]

Despite the fact that the EAC is not a party to this litigation, the EAC is considering Judge Silver's opinion and its impact upon the Federal Form. Additionally, the EAC will also carefully consider Arizona's request to amend its state-specific instructions on the Federal Form.

Thank you, Chairman Ehlers and Ranking Member Millender-McDonald. I would be glad to address any specific questions you or any members of this Committee have.

[1] HAVA makes EAC responsible for coordinating with states to develop and publish specific instructions on how to complete the Federal Voter Registration Form. EAC staff ensures that all state-specific instructions to the Federal Form are in accordance with the law of each respective State covered by NVRA. EAC staff routinely reviews the registration requirements for each State and compares such requirements to the state-specific instructions affixed to the Federal Form. When inconsistencies are found, EAC staff contacts the State to ensure that the instructions contained in the Federal Form accurately reflect that state's requirements for voter registration.

Following such a routine inquiry, the EAC was contacted by the Arizona Secretary of State's office requesting that Arizona's instructions

on the Federal Form be changed to reflect its requirement for documentary proof of citizenship as created by the passage of Proposition 200.

[2] 42 U.S.C.
§1973gg-4(a).

[3] Via written
correspondence from Arizona Secretary of State Jan Brewer to Paul S.
DeGregorio, Chairman, U.S. Election Assistance
Commission, dated June 20, 2006.